

**AGREEMENT BETWEEN THE CITIES OF ALLEN, FRISCO, PLANO AND THE
PRESBYTERIAN PLANO DIAGNOSTICS SURGERY CENTER FOR USE OF THE
ALLEN, FRISCO, AND PLANO 800 MHz TRUNKED COMMUNICATIONS SYSTEM**

The **CITIES OF PLANO, TEXAS, ALLEN, TEXAS, AND FRISCO, TEXAS**, all municipal corporations, (hereinafter referred to as "Cities"), and the **PRESBYTERIAN PLANO CENTER FOR DIAGNOSTICS SURGERY** a hospital for-profit corporation (hereinafter referred to as "PPCDS"), agree as follows:

WHEREAS, The Cities of Allen, Frisco, and Plano jointly own, operate, and maintain an 800 MHz trunked communications system (hereinafter referred to as "System") for the purpose of providing radio communications in support of its governmental operations; and

WHEREAS, PPCDS wishes to use the Cities' System to provide Communications within PPCDS, Buildings and/or Facilities on a day-to-day basis and will have the ability to coordinate with Plano Dispatch in time of emergency.

WHEREAS, the Cities hereby consent to such use of the System by PPCDS, and recognizes that such use benefits PPCDS, and the public health and welfare.

NOW, THEREFORE, the Cities and PPCDS, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

I. TERM

The term of this Agreement is for a period of one (1) year, beginning on the 1st day of November 2008, and ending on the 30th day of October 2009, with an optional two (2) year automatic renewal, unless terminated earlier by either party in accordance with the terms of this Agreement. Unless terminated by either Plano or PPCDS, as set forth hereafter, this agreement shall automatically renew yearly without further action until its automatic termination on the 30th day of October 2011.

II. OBLIGATIONS OF PARTIES

2.01 Plano shall provide PPCDS with radio identification numbers (aliases). And/or Radio talkgroups (channels) on the Plano system.

2.02 PPCDS shall use the System in accordance with this Agreement to provide interoperability of communications to Plano Dispatch in an emergency and PPCDS and its users on the System only for conducting day-to-day operations specifically identified herein.

2.03 When using the System, PPCDS shall abide by all applicable federal, state, and local laws, rules, and regulations, including any rules and regulations of Allen, Frisco, and Plano Radio System. When PPCDS is using the System for interoperability with Talkgroups other than those provided for by this Agreement, PPCDS shall also abide by the rules for such Talkgroups.

2.04 PPCDS must make written requests to the System Manager for the activation of radios on the System, which must include the model and serial number of the radio, the name of the user, and the required Talkgroups.

2.05 PPCDS shall be responsible for furnishing/purchasing its own radios. Radio Manager must approve radio type and model.

2.06 PPCDS Programming additional units will be performed by the City of Plano Radio shop.

2.07 PPCDS may operate no more than two (2) mobile/portable units on their Talkgroup at any one time.

2.08 PPCDS shall operate on Allen, Frisco, and Plano joint system ONLY for purposes related to their provision of emergency and day-to-day services. Any other use by PPCDS is prohibited.

III. FEES

3.01 The fees assessed against PPCDS and due annually for the services and use of the System are as follows:

(1)	Lease radio airtime (per month, per radio)	\$ 8.56
(2)	Lease Talkgroup (per month, per Talkgroup)	\$ 62.97
(3)	Contract services (per month)	\$ 96.30

None of the charges listed above include the cost of maintenance of mobiles, portables, or control stations/points.

The Cities may increase these fees at the beginning of each renewal period by an amount not to exceed seven percent (7%) of the previous year's fees. The Cities will provide 120 days notice to PPCDS before increasing the fees.

Total Fees for Annual Service

The Cities will calculate the annual fee due based upon seven (7) current radio units in service and one (1) Talkgroup. This amount is subject to change when PPCDS adds or deletes the number of radios and/or Talkgroups in service.

IV. PAYMENT DUE

PPCDS agrees to pay the Cities the annual fees specified under **Article III**. Within thirty (30) days of the receipt of the invoice. Should PPCDS add radios or Talkgroups to the service within a term, PPCDS agrees to pay the additional fees(s) due within thirty (30) days of invoice.

V. TERMINATION

5.01 Termination of this Agreement may occur by any of the following:

- (a) Either party may terminate this Agreement at any time by giving ninety (90) days advance written notice. PPCDS shall pay for all fees incurred through the effective date of termination.
- (b) If the Cities permanently discontinue operation of the System, this Agreement shall terminate on the date of discontinuance without further notice.
- (c) In the event of any default of any term, this Agreement may be terminated at either party's discretion if the default is not cured within ten (10) days of receipt of written notice identifying the reason for such default.

VI. INDEMNIFICATION

Contractor shall release, defend, indemnify and hold harmless the Cities and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages (including loss of use), losses, demands, suits, judgments and costs, including attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor is expressly required to defend the Cities against all such Claims.

In their sole discretion, the Cities shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify the Cities, unless such right is expressly waived by the Cities in writing. The Cities reserve the right to provide a portion or all of its own defense; however, the Cities are under no obligation to do so. Any such action by the Cities is not to be construed as a waiver of Contractor's obligation to defend the Cities or as a waiver of Contractor's obligation to indemnify the Cities pursuant to this Contract. Contractor shall retain the Cities approved defense counsel within seven (7) business days of Cities' written notice that Cities are invoking the right to indemnification under this Contract. If Contractor fails to retain Counsel within such time period, the Cities shall have the right to retain defense counsel on their own behalf, and Contractor shall be liable for all costs incurred by Cities.

VII. ASSIGNMENT AND SUBLETTING

PPCDS agrees to retain control and to give full attention to the fulfillment of this Agreement; PPCDS cannot assign or sublet this Agreement without the prior written consent of a majority of the Cities. Further, PPCDS cannot sublet any part or feature of the work to anyone objectionable to the Cities. PPCDS also agrees that the subletting of any portion or feature of the work, or materials required in the performance of this Agreement, does not relieve PPCDS from its full obligations to the Cities as provided by this Agreement.

VIII. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Cities and PPCDS and supersedes all prior negotiations, representations, and/or agreements, either written or oral. The parties may amend this Agreement only by written instrument signed by PPCDS and the Cities, except that execution of an amendment for assignment or subletting only requires the signature of a majority of the Cities.

IX. NOTICES

Unless notified otherwise in writing, all notices required to be given to either party shall be in writing and delivered in person or sent by certified mail to the respective parties at the following addresses:

PPCDS Representative:

Randy J. Hostettler
Facilities Director
Presbyterian Plano Diagnostics Surgery
6020 West Parker Rd
Plano Texas 75093
(972) 403-2823

Plano Representative:

Director of Public Safety Communications
City of Plano
P.O. Box 860358
Plano, TX 75086-0358
(972) 941-7931

Allen Representative:

Police Chief
City of Allen
305 W. McDermott
Allen, Texas 75013

Frisco Representative:

Police Chief
City of Frisco
8750 McKinney Road
Frisco, Texas 75034

X. AUTHORITY TO SIGN/CITY COUNCIL AUTHORIZATION

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto. Cities have executed this Agreement pursuant to duly authorized action of the City Council of Plano on Feb. 17, 2009, the City of Allen on Jan. 13, 2009, and the City of Frisco on _____, 200____. PPCDS has executed this Agreement on _____, 200____.

XI. SEVERABILITY

The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to the law or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event,

either party may terminate this Agreement by giving the other party thirty (30) days written notice.

XII. VENUE

This Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas. The parties agree that this Agreement shall be enforceable in Collin County, Texas, and, if legal action is necessary, exclusive venue shall lie in Collin County, Texas.

XIII. INTERPRETATION OF AGREEMENT

Although this Agreement is drafted by the Cities, this is a negotiated document. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

XIV. REMEDIES

No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

XV. SUCCESSORS AND ASSIGNS

The parties each bind themselves, their respective successors, executors, administrators and assigns to the other party to this contract. Neither party will assign, sublet, subcontract or transfer any interest in this Agreement without the prior written consent of the other party. No assignment, delegation of duties or subcontract under this Agreement will be effective without the written consent of both parties.

EXECUTED this the ____ day of _____, 200__.

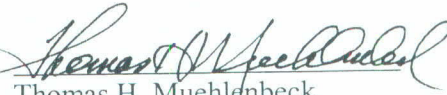
PRESBYTERIAN PLANO DIAGNOSTICS SURGERY

BY:

Name: _____

Title: _____


CITY OF PLANO, TEXAS

BY: 
Thomas H. Muehlenbeck
City Manager

APPROVED AS TO FORM:


Diane C. Wetherbee, City Attorney

CITY OF ALLEN, TEXAS

BY: 
Peter H. Vargas, City Manager

APPROVED AS TO FORM:


Peter G. Smith, City Attorney

CITY OF FRISCO, TEXAS

BY: _____
George A. Purefoy, City Manager

APPROVED AS TO FORM:

Rebecca H. Brewer, City Attorney

ACKNOWLEDGMENTS

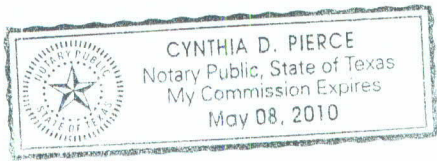
STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200__, by _____, _____, of **PRESBYTERIAN PLANO DIAGNOSTICS SURGERY**, a hospital for-profit corporation, on behalf of such corporation.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

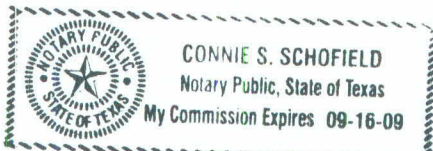
THOMAS H. MUEHLENBECK, City Manager of the CITY OF PLANO, TEXAS, a home-rule municipal corporation, on behalf of such corporation, acknowledged this instrument before me on the 20th day of February, 2009.



Stephania D. Rence
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the 19th day of March, 2009 by **PETER VARGAS**, City Manager, of the **CITY OF ALLEN, TEXAS**, and a home-rule municipality on behalf of such municipality.



Carrie Schmitt
Notary Public, State of Texas

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF COLLIN

This instrument was acknowledged before me on the _____ day of _____, 200__ by **GEORGE PUREFOY**, City Manager of the **CITY OF FRISCO, TEXAS**, a _____, on behalf of such _____.

Notary Public, State of Texas